

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, AT CINCINNATI

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|---|---|-----------------------|
| LARRY LUNAN and |) | |
| SUSAN LUNAN, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. C-1-01-425 |
| |) | |
| MYCOM GROUP, INC., a Nevada Corporation |) | JUDGE HERMAN J. WEBER |
| PATRICIA A. MASSEY, G. ALLAN MASSEY, |) | |
| GEORGE W. YOUNG, JOAN CARROLL, |) | |
| KENNETH R. HALL, and TERRY SEIPELT, |) | |
| |) | |
| Defendants. |) | |

MOTION TO STRIKE DEFENDANTS' POST-TRIAL BRIEF

Come now the Plaintiffs, Larry Lunan and Susan Lunan, by and through counsel, and move this Court to strike the Defendants' Post-Trial Brief filed in this matter on January 15, 2004. In support of their motion, Plaintiffs state as follows:

1. This case was tried before the Honorable Judge Herman J. Weber on December 3 and December 4, 2003 in Cincinnati, Ohio.
2. During closing argument, Plaintiff's counsel specifically asked the Court if it would allow for post-trial briefing, to which question the Court responded that it would allow the parties to amend their previously filed Proposed Findings of Fact and Conclusions of Law.

3. Specifically, the trial transcript reflects the following discussion:

Mr. Trent . . . Is the Court going to permit briefing? Do you want briefing post-trial?

The Court: If you wish to amend your statement of facts, you may. I mean, you want to embellish your statement of facts after you've heard the evidence, why, I would be glad to permit you to do that, and, of course, that would entail additional conclusions of law.

Mr. Trent: Yes, sir. I think that would be beneficial. And would you permit legal argument in that because there are some points that I think could - -

The Court: I presume that if you have a conclusion of law, you'd have to justify it.

Trial Transcript at 276.

4. Despite the Court's clear direction to file only amended Proposed Findings of Fact and Conclusions of Law, counsel for the Defendants has chosen to submit to the Court a sixteen page Post-Trial Brief in addition to Proposed Findings of Fact and Conclusions of Law.

5. Plaintiffs' counsel has abided by the Court's direction and filed with the Court Amended Proposed Findings of Fact and Conclusions of Law only.

5. As the Defendants' submission of a Post-Trial Brief in this matter is clearly contrary to the Court's direction, and since Plaintiffs would be prejudiced by not being given the same opportunity to file a Post-Trial Brief, the Defendants' Post-Trial Brief should not be considered by the Court.

WHEREFORE, given the foregoing, Plaintiffs pray that the Court enter an Order striking the Defendants' Post-Trial Brief from the record of this case and that such Brief not be considered by the Court in rendering its decision in this matter.

Respectfully Submitted,

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Certificate of Service

I hereby certify that on January 15, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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